

**Village of Irvington
Zoning Board of Appeals**

Minutes of Meeting held January 21, 2003

A meeting of the Zoning Board of Appeals of the Village of Irvington was held at 8:00 P.M. on Tuesday, January 23, 2003, in the former Village Library, Town Hall, Irvington, N.Y.

The following members of the Board were present:

Louis C. Lustenberger, Chairman
George Rowe
Paul M. Giddins
Robert Bronnes
Robert Myers

Mr. Lustenberger acted as Chairman and Mr. Giddins as Secretary of the meeting.

The minutes of the December, 2002 meeting were duly approved.

There were four matters on the agenda:

Case No.

2003-01 Eric & Beatrice Goldsmith – 73 Havermayer Road (Sheet 12A, Block 255; Lots P91D, P91C, P91H2, P91J, P91K2)

Applicant Eric Goldsmith appeared with his architect Michael Esmay.

In lieu of the verified statement of compliance with the notice provisions of § 224-98(A) of the Irvington Zoning Ordinance (the “Code”), the Applicant filed the applicable proofs of service.

On September 25, 2001, the Applicant received a variance from the provisions of §§ 224-11 of the Code, relating to front yard set backs, so as to permit the construction of an addition to the Applicant’s house. The Applicant appeared again because a new survey of the property showed a different location for the house than the survey used at the time the prior variance was granted. The Applicant sought a determination of whether a new variance was required because of the difference in the two surveys.

The Board reviewed drawings and the survey submitted by the Applicant and determined that the difference in the surveyed location of the house between the old and new survey did not require a variance and that the house’s location shown by the new survey was within the parameters of the variance granted by the Board’s September 25, 2001 decision.

The board concluded that the variance previously granted applies to the newly surveyed location of the Applicant’s house, and that therefore a new variance was not required.

2003-02 DeNardo Development Corp – Erie Street – Roland Avenue (Sheet 15, Lot P123A)

The Applicant appeared with his engineer Paul Petretti.

In lieu of the verified statement of compliance with the notice provisions of § 224-98(A) of the Code, the Applicant filed the applicable proofs of service.

The Applicant sought a variance from the provisions of §§ 224-7A and 224-89A(1) of the Code, relating to existing non-conforming uses, so as to permit the partial demolition, construction and renovation of a single family residence.

The Applicant noted that the property, which is 21,221 square feet, is presently in the 1F-40 zone (40,000 square foot minimum lot size), but was formerly in a 1F-20 zone (20,000 square foot minimum lot size) as noted on a 1958 Zoning Map attached to the application. The Applicant seeks to build a substantially larger house than presently exists and argues that the requested variance would be in the spirit of the allowable 1F-20 zoning, even though the house is presently in a 1F-40 zone.

Present in opposition to the application were numerous neighbors and members of the Ardsley Park Property Owners Association (the “Association”). The representative of the Association was Herb Camp. The Association voiced strong opposition to the Applicant’s proposal, arguing that it would result in a very large structure being built on a relatively small lot, and would be out of character with the other houses in the neighborhood and community.

After listening to arguments from both the Applicant and the Association, the Board determined that it required additional facts in order to rule on the application. Accordingly, the application was adjourned.

2003-03 Kevin & Donna Marie Gallagher – 77 South Buckhout Street (Sheet 7A; Block 230; Lot 10)

The Applicants appeared with their architect Hope Scully.

The Applicants did not file the verified statement of compliance with the notice provisions of § 224-98(A) of the Code, and did not file the applicable proofs of service.

The Applicant sought a variance from the provisions of §§ 224-11 (set backs) and 224-89 (non-conforming use) of the Code, to permit the construction of additions to the front and rear of the Applicant's house.

The Board reviewed drawings submitted by the Applicant and noted that although the addition to the rear of the house intrudes into the side yard set backs, the amount of such intrusion was not large and did not significantly increase the degree of non-conformity already existing on the lot. The proposed addition to the front of the house was only approximately 46 square feet and small enough to warrant a variance without any adverse effects on the neighborhood or nearby properties.

After weighing the applicable factors, the board concluded that the benefit to the Applicant from granting the variance outweighed any detriment to the health, safety and welfare of the neighborhood or community. The Board also found that granting the variance would not produce an undesirable change in the character of the neighborhood or a detriment to nearby properties, that the benefit sought by Applicant could not feasibly be achieved by any method other than a variance, and that the requested variances were small. The Board further concluded that the requested variances would not adversely affect the physical or environmental conditions of the neighborhood or district and that the hardship necessitating the request for the variances, while self-created, did not for that reason alone outweigh the factors favoring the variances.

There was no opposition to the application.

The Chairman then moved that a vote be taken on the application. The motion was seconded and thereafter the Board voted on the Applicant's request for a variance. The Board voted unanimously to grant the request for a variance.

2003-04 Westwood Development Associates – Lot #4 (Sheet 10; Lot P5J2)

The Applicant appeared.

In lieu of the verified statement of compliance with the notice provisions of § 224-98(A) of the Code, the Applicant filed the applicable proofs of service.

The Applicant sought a variance from the provisions of § 224-13 (coverage) of the Code, to permit the construction of a new home on Westwood Lot 4. The Chairman recused himself from the voting.

The Board noted that the Applicant, a developer of the proposed Westwood development, previously sought the same variance he now seeks. The Board further noted that the original application had been denied. The plans submitted at the original application were for a residence that, together with other improvements on the lot that the Code includes in determining coverage, would have exceeded the maximum allowable coverage for the lot by approximately 17%. The Board found that to be excessive and denied the original application.

The Board reviewed revised drawings submitted by the Applicant and noted that the revised plans reduced the excess coverage to 10%. The Board concluded that this excess coverage was outweighed by the factors favoring a variance.

After weighing the applicable factors, the board concluded that the benefit to the Applicant from granting the variance outweighed any detriment to the health, safety and welfare of the neighborhood or community. The Board also found that granting the variance would not produce an undesirable change in the character of the neighborhood or a detriment to nearby properties, that the benefit sought by Applicant could not feasibly be achieved by any method other than a variance, and that the requested variances were small. The Board further concluded that the requested variances would not adversely affect the physical or environmental conditions of the neighborhood or district and that the hardship necessitating the request for the variances, while self-created, did not for that reason alone outweigh the factors favoring the variances.

The Board specifically noted that there were circumstances unique to this application that made it inapplicable, as precedent, to any future application regarding lots in the Westwood development. The Applicant advised the Board that he had entered into a contract to build the residence in question, and had created plans therefor, in the mistaken belief that proposed Village legislation ameliorating the set back ***and*** coverage requirements for the Westwood Development, by way of granting the Planning Board greater discretion with respect thereto, had been or would be enacted. However, as subsequently enacted, that legislation granted the Planning Board such discretion with respect to set back requirements, but left the Code's coverage requirements unchanged. The Applicant agreed that future variance applications, made with full knowledge of the coverage requirements, could not cite the instant application, based on a mistaken belief as to those requirements, as precedent.

The Board also concluded that the 10% overage in coverage was not, in fact, precedent for any future application for relief from the Code's coverage provisions because all variances depend on the particular facts of the case and future applications may not have the design amenities that ameliorate the overage in this case. The Board also noted that this application has been revised twice, first reducing coverage to a 17% overage in advance of the first application, then reducing it further to a 10% overage following the denial of the earlier application. The Board found that applications that start with a 10% overage, without demonstrable efforts to comply with the coverage requirements, are therefore distinguishable.

The Board noted that for the foregoing reasons, the granting of the requested variance is not, and is not to be taken as, precedent for any future applications with respect to the Westwood development.

Edward Tischelman, a neighbor of the proposed residence, appeared to state that he did not oppose the construction of the residence but that he was concerned about the potential precedential impact of granting the application.

There was no opposition to the application.

The Chairman then moved that a vote be taken on the application. The motion was seconded and thereafter the Board voted on the Applicant's request for a variance. The Board voted unanimously to grant the request for a variance.

There being no further business, the meeting was, upon motion duly made and seconded, unanimously adjourned.

/s/ Paul M. Giddins
Paul M. Giddins